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June 11, 2014

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You are hereby notified that the Court has entered the following opinion and order:

2014AP756-CRNM State of Wisconsin v. Mark J. Helsel (L.C. # 2013CM906)

Before Neubauer, P.J.¹

Mark J. Helsel appeals from a judgment of conviction for misdemeanor battery, as a repeater. His appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). Helsel received a copy of the report, was advised of his right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude that the judgment may be

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21

While an inmate at the Wisconsin Resource Center, Helsel kicked a guard in the head during a search. Although Helsel initially entered a not guilty by reason of mental disease or defect (NGI) plea, he entered a no-contest plea to the charge. The prosecution recommended a consecutive six-month jail sentence in compliance with the plea agreement. Helsel recommended a two-month sentence. A consecutive six-month jail sentence was imposed.

The no-merit report addresses the potential issues of whether Helsel's plea was freely, voluntarily, and knowingly entered and whether the sentence was the result of an erroneous exercise of discretion. Our review of the record persuades us that no issue of arguable merit could arise from either point.

Although brief, the plea colloquy satisfied the requirements of WIS. STAT. § 971.08(1), *State v. Bangert*, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and *State v. Hampton*, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. We note that it was not necessary for the trial court to engage in a personal colloquy with Helsel about his decision to forego his NGI plea.² *See State v. Francis*, 2005 WI App 161, ¶1, 285 Wis. 2d 451, 701 N.W.2d 632.

The sentence was imposed for the purposes of not unduly depreciating the seriousness of the offense, for punishment so as to impress upon Helsel the need to follow institutional rules, and to protect institutional workers and the public. The sentence was a demonstrably proper

² The examiner's report did not support a NGI defense.

exercise of discretion. *See State v. Gallion*, 2004 WI 42, ¶¶40-43, 270 Wis. 2d 535, 678 N.W.2d 197.

Any other possible appellate issues are forfeited because a no-contest plea forfeits the right to raise nonjurisdictional defects and defenses, including claimed violations of constitutional rights. *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886; *State v. Lasky*, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. Further, the record suggests no other possible issues. Accordingly, this court accepts the no-merit report, affirms the conviction, and discharges appellate counsel of the obligation to represent Helsel further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Timothy T. O'Connell is relieved from further representing Mark J. Helsel in this appeal. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals